In the High Court of Judicature at Madras

Dated: 24.6.2015

Coram:

The Hon'ble Mr.Justice V.Ramasubramanian
and
The Hon'ble Mr.Justice T.Mathivanan

Writ Appeal No.2459 of 2013

R.Karunakaran .. Appellant

vs.

1.The Member Secretary,
Chennai Metropolitan Development Authority,
Chennai-8.

2.The Chief Executive Officer,
Chennai Metropolitan Development Authority,
Chennai-8. .. Respondents

Prayer: Appeal is filed against the order dated 28.11.2013, made in W.P.11943/2007.

The Writ Petition is filed under Article 226 of the Constitution of India for the Issuance of a Writ of certiorari calling for the records relating to the first respondent in letter No. K11-12859/2003 dated 17.2.2004 and the consequential order in letter No.K1-3550/99 dated 7.2.2007 and quash the same.

For appellant : Mr.S.Senthilnathan
For respondents : Mr.K.Raja Srinivas

JUDGMENT

[by V.Ramasubramanian, J.]

This Writ Appeal arises out of an order passed by a learned Judge, actually allowing the Writ Petition filed by the appellant.

2. Heard Mr.S.Senthilnathan, learned counsel for the appellant and Mr.K.Raja Srinivas, learned counsel for the respondents.

3. The appellant was the owner of a land measuring a little over 2400 sq.ft. [6 cents] in Survey Nos.17/13 and 17/16, Koyambedu village. The said land became the subject matter of proceedings for acquisition. The appellant successfully challenged the acquisition proceedings. However, the Appeal filed by the Chennai Metropolitan

Development Authority was allowed and the matter was taken to the Supreme Court by the appellant. Before the Supreme Court, the Chennai Metropolitan Development Authority agreed to allot an alternative site of equivalent value. But the alternative site was found to be of an extent measuring 910 sq.ft. over and above the extent of the land acquired. Therefore, by proceedings dated 20.12.2002, the Chennai Metropolitan Development Authority directed the appellant to pay the cost of the excess land of 910 sq.ft. at the agreed rate of Rs.1,220/- per sq.ft. A total amount of Rs.11,10,200/- worked out on the basis of the agreed rate of Rs.1,220/- per sq.ft. for the excess land of 910 sq.ft. was directed to be paid in six monthly instalments, apart from the down payment.

4. By consent of parties, the down payment to be made was fixed at Rs.2,77,550/-. The balance amount of Rs.8,32,650/- was directed to be paid in six monthly instalments, together with interest at 18% per annum.

5. The payment of the first instalment was made by the appellant on 19.8.2003, after making the initial payment on 10.1.2003. Taking exception to the payment of the 1st instalment in August 2003, the Chennai Metropolitan Development Authority sent a communication dated 17.2.2004 rejecting the payment. The Chennai Metropolitan Development Authority was clearly in error in doing so. Since the down payment was made on 10.1.2003, the Chennai Metropolitan Development Authority could have expected the appellant to make payment of the 1st instalment in July 2003. But unfortunately, the letter dated 20.12.2002 did not indicate the schedule of payment except stating that the balance payment had to be made in six half-yearly instalments. Therefore, the appellant was not wrong in making the payment of the 1st instalment in August 2003.

6. On the contrary, the Chennai Metropolitan Development Authority was clearly in error in rejecting the said payment.

7. After the rejection of payment of the 1st instalment, the appellant came up with a Writ Petition challenging the cancellation of allotment. In the said Writ Petition in W.P.No.11943/2007, an interim order of stay of cancellation of the allotment and dispossession was granted in favour of the appellant. The Writ Petition came up for final disposal after six years in 2013.

8. The original mistake committed by the Chennai Metropolitan Development Authority in rejecting the payment of the 1st instalment made in August 2003, was compounded by the appellant himself by not paying the subsequent instalments on account of the interim stay granted by this Court. Consequently, when the Writ Petition came up for final hearing in November, 2013, none of the half-yearly instalment payments had been made by the appellant. Therefore, taking note of the fact that the Chennai Metropolitan Development Authority had first committed the mistake, the learned Judge allowed

the Writ Petition by an order dated 28.11.2013 and directed the appellant to pay all the six half-yearly instalments together with interest at 18% per annum.

9. Though the said order, in our opinion, is in favour of the appellant, he has come up with the above Writ Appeal on the ground that a direction to pay interest at 18% per annum, after finding the Chennai Metropolitan Development Authority guilty of a breach of the obligations, was not proper.

10. Mr.S.Senthilnathan, learned counsel for the appellant took pains to contend that the rejection of the payment of 1st instalment was completely arbitrary and improper. It was only the Chennai Metropolitan Development Authority which committed the mistake of rejecting the first instalment and driving the appellant to Court. Therefore, the learned counsel contended that the appellant cannot be penalized. He has also brought to our notice the fact that the appellant had deposited all the balance instalments together with interest at 18% per annum calculated for a period of three years during which the instalments were spread over. Therefore, the learned counsel for the appellant submitted that the Chennai Metropolitan Development Authority cannot get a premium for the wrong committed by them.

11. We have carefully considered the above submissions.

12. At the outset, we should point out that the first mistake was committed by the Chennai Metropolitan Development Authority in rejecting the payment of 1st instalment when it was tendered in August 2003. But the next mistake was committed by the appellant himself. When he came to Court and obtained a stay, the stay was not for the compliance of his obligations under the allotment order dated 20.12.2002. There was nothing that prevented the appellant from continuing to make payment of the six half-yearly instalments even during the pendency of the Writ Petition. He did not choose to do so and a period of six years elapsed before the Writ Petition came up for final disposal.

13. Yet another aspect of the matter is that the learned Judge did not ask the appellant to pay any default interest or any penal interest. The contract does not provide for them to the advantage of the appellant. But the contract provides for payment of interest, for three years on the presumption that it will be paid within three years. The readiness and willingness of the appellant to make payment is not equivalent to payment. Moreover, as we have pointed out earlier, the appellant owed a duty to make payment after having obtained an interim order of protection. It will be worthwhile to extract para. 2 of the allotment order dated 20.12.2002. It reads as follows:-

"An initial deposit of Rs.2,77,550/- [Rupees two lakhs seventy seven thousand five hundred and fifty only] should be paid on or before 19.01.2003, by a Demand Draft from any nationalised bank, payable at Chennai, drawn in favour of the Chief Executive Officer, CMDA, Chennai - 600 008 and the balance 75% amount in 6 half yearly instalment with 18% per annum. No further extension of time for payment of initial Deposit is permissible and the provisional allotment order will stand cancelled automatically after the due date for payment without any further notice."

14. A bare perusal of the portion of the allotment order extracted above would show that the total amount payable towards the allotment of excess land was so arrived at, taking into account the interest component. When interest at 18% per annum was made inbuilt into the amount fixed for the purpose of making payment in easy instalments, the same cannot be equated to penal interest or default interest. All the above contentions could have been accepted only if the learned Judge had imposed penal interest or default interest. The contractual interest payable by the person cannot be said to have stopped accruing, on the date of probable completion of instalments, when nothing prevented the appellant from making payment on time. Therefore, the Writ Appeal stands dismissed. No costs. M.P.No.1 of 2013 is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To
1.The Member Secretary,
Chennai Metropolitan Development Authority,
Chennai-8.

2.The Chief Executive Officer,
Chennai Metropolitan Development Authority,
Chennai-8.

1 cc to Mr.S.Senthilnathan , Advocate Sr.No.31067
1 cc to Mr. K.Raja Srinivas, Advocate Sr.No.31075

W.A.2459 of 2013

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